hot and cold or, to use the familiar expression in Scottish law, to approbate and reprobate. I was also not satisfied that the Company had no other profitable activity. It will, of course, be for the shareholders as a whole to decide if they wish the Company to continue operations.

That, however, does not conclude the matter for there were two further grounds (not raised before me) upon which the petitioners should be denied the order for winding up.

First, I regard with considerable scepticism the *bona fides* of the petitioners in presenting this petition in order to obtain relief from alleged oppression, having regard to the alternative prayer in it for "rescission of all those shares allotted to the petitioners on April 30, 1986, and repayment of $25,381 paid therefore." There is authority for saying that even if the directors or majority shareholders have been guilty of improper or unreasonable conduct so that there appears to be a *prima facie* case for relief, it will be refused if the real purpose of the petitioners is to obtain payment of money owed by the Company (see *Re Bellador Silk Ltd.*[7]).

Secondly, I noted that the major matters complained about by the petitioners appear to have been spread out over a considerable period of time. It is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith (see *Re Jermyn Street Turkish Baths Ltd.*[8]).

In the present case, there was inordinate delay in the presentation of the petition sufficient to debar the petitioners from relief by way of an order for winding up.

In all the circumstances, I had no hesitation in dismissing the petition with costs.

Order accordingly.

Solicitors: *Shanmugam & Co.; Thillaimuthu & Phock Kin.*

ALAN WEBB & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Abu Mansor J.) June 20, 1987]

[Kuching – Criminal Appeal No. KG 14 of 1985]

Trade Description – Supply of goods – Falsely stating that articles were offered previously at higher prices – Presumption against appellants – When presumption can be raised – Trade Descriptions Act 1972, s.14(1)(b)

The two appellants in this case, Alan Webb and Christopher Webb, were charged with three offences under section 14(1)(b) of the Trade Descriptions Act 1972 and punishable under section 18 of the same Act (Laws of Malaysia, Act 87). The three charges stated that the appellants, through advertisements, gave false indications, *i.e.* that the articles sold at the present prices were previously offered at higher prices, when it was not so offered.

At first instance the learned magistrate acquitted and discharged the appellants without their defence being called. The learned Deputy Public Prosecutor appealed. On appeal, the learned judge, John Chong J., reversed the magistrate's decision and ordered that their defence be called. The learned magistrate called for their defence and after hearing their defence and submissions of counsel convicted both appellants on the charges. The appellants were each fined. The appellants then appealed against their convictions and sentences.

Held, dismissing the appeal: (1) the principle to be applied is that the appellate court will only interfere if the decision of the lower court can be said to be tainted with an error of law or such decision is against the weight of the evidence;

(2) before the presumption under section 14(3) can be invoked, the prosecution must satisfy the court by evidence that the goods were not in fact offered. Upon this fact being established, then it is incumbent on the court to invoke the presumption. Nothing short of this matter is sufficient;

(3) under Malaysian law, by virtue of subsection (4) of section 14, it is for the defence to prove that they had so advertised at a higher price for the whole of the relevant period in section 14. If the defence had not done so, then it is false;

(4) in the present case, the appellants did not advertise at any time the recommended higher price. The 'falsity' meaning to be given is the statutory meaning. There was falsity in the present case;

(5) the convictions and sentences were confirmed.

Cases referred to:

(1) *Mat* v. *Public Prosecutor* [1963] M.L.J. 263.
(2) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89, P.C.
(3) *House of Holland Ltd.* v. *London Borough of Brent* [1971] 2 All E.R. 296.
(4) *Ng Kim Huat* v. *Public Prosecutor* [1961] M.L.J. 308, 309.

CRIMINAL APPEAL.

K.C.I. Reddy for the appellants.

Abdul Rahman bin Sebeli (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Abu Mansor J. : Both appellants were charged before the learned magistrate, Kuching for an offence under section 14(1)(b) of the Trade Descriptions Act. They were each charged as follows:

"1st Charge

That you jointly on July 30, 1981, at about 10.30 a.m., at the premises of the Industrial and Scientific Co., No. 12 Gartak Street, Kuching, in the District of Kuching, First Division, in the State of Sarawak, in offering to supply goods namely NEW WORLD FLAIR OVEN by means of an advertisement in the 'Sarawak Tribune' dated July 28, 1981 did give a false indication to the effect that the price of $1,742.80 at which the goods was offered as 'Hari Raya Special Offer' was less than the price of $2,050.40 of the said goods of the same descriptions which was previously offered by you, whereas in actual fact, the price of $2,050.40 was never being offered by you previously and thereby you have committed an offence under section 14(1)(b) of the Trade Descriptions Act 1972 and punishable under section 18 of the same Act (LAWS OF MALAYSIA, ACT 87).

2nd Charge

That you jointly on July 30, 1981, at about 10.30 a.m., at the premises of the Industrial and Scientific Co., No. 12 Gartak Street, Kuching, in the District of Kuching, First Division, in the State of Sarawak, in offering to supply goods namely 'NEW WORLD CONSORT' oven by means of an advertisement in the 'Sarawak Tribune' dated July 28, 1981 did give false indication to the effect that the price of $1,494.60 at which the goods was offered as 'Hari Raya Special Offer' was less than the price of $1,758.35 of the said goods of the same descriptions which was previously offered by you, whereas in actual fact the price of $1,758.35 was never being offered by you previously and thereby you have committed an offence under section 14(1) (b) of the Trade Descriptions Act 1972 and punishable under section 18 of the same Act (LAWS OF MALAYSIA, ACT 87).

3rd Charge

That you jointly on July 30, 1981, at about 10.30 a.m., at the premises of the Industrial and Scientific Co., No. 12 Gartak Street, Kuching, First Division, in the State of Sarawak, in offering to supply goods namely OVEN MODEL 534 VG by means of a price tag did give a false indication to the effect that the price of $782.00 at which the goods was offered as 'Hari Raya Special Offer' was less than the price of $920.00 of the said goods of the same description which was previously offered by you, whereas in actual fact the price of $920.00 was never being offered by you previously and thereby you have committed an offence under section 14(1)(b) of the Trade Descriptions Act, 1972 and punishable under section 18 of the same Act (LAWS OF MALAYSIA, ACT 87)."

Before the learned magistrate the appellants were acquitted and discharged without their defence being called. The learned Deputy Public Prosecutor appealed against the appellants' acquittal and on January 26, 1985 the learned judge, John Chong J., reversed the magistrate's decision and ordered the magistrate that their defence be called. The learned magistrate called for their defence and after hearing their defence and submissions of counsel convicted both appellants on the charges as framed earlier. The appellants were each fined and the exhibits were ordered to be forfeited.

The appellants then appealed against their conviction and sentence. At the date of hearing of this appeal, the appellant, Mr. Christopher Webb, was absent and both counsel applied that I proceed with the appeal in his absence and they urged the court that at the end of which it is then within my discretion whether to apply to him whatever order I wish to make pertaining to this matter. I agreed. After hearing arguments I reserved decision to a date to be fixed.

It was urged before us that we should interfere with the learned magistrate's conviction and sentence. The reason given was that the principal ground upon which the learned judge ordered the learned magistrate to call the appellants to their defence on all charges was the presumption under section 14(4) of the Trade Descriptions Act which placed the burden on the appellants of proving that the advertisement of July 28, 1981 was not false and the appellants having explained the learned magistrate should have accepted their explanation as being reasonably true. The learned magistrate should therefore have acquitted and discharged both appellants. Counsel for the appellants had even suggested as a matter of fact and law the learned judge erred in ordering the learned magistrate to call the appellants to their defence as the groundwork for such a presumption to be invoked has not been laid by the prosecution. Counsel relied mainly on the authorities of *Mat* v. *Public Prosecutor*;[1] *Public Prosecutor* v. *Yuvaraj*[2] and *House of Holland Ltd.* v. *London Borough of Brent*.[3]

In elaboration that there was no falsity counsel urged the court to consider the explanation of the appellants that the cancelled higher price (*e.g.* New Word Consort was offered at $1,494.60 and the cancelled price was $1,758.35) that appeared in

the advertisement in the "Sarawak Tribune" of July 28, 1981 was not false. It was capable not only of one explanation but several interpretations. In the case of the appellants what actually transpired was that the cookers when imported were so imported when the rate of exchange for the British pound was high. As the value of the pound as against the Malaysian currency became less expensive he reduced the price so that his customers could take advantage of the better rate of exchange. In other words, the cancelled higher price was the true value and price of the cookers at the old rate of exchange and the lower price was the price of the cooker he was offering for sale. Hence, he says, there was no falsity whatsoever in the cancelled higher price. At the same time, by the same token, as appellants are saying that because the cancelled price of the cookers was in actual fact the old value of the cookers the appellants also say at no time the cookers were offered for sale at that price within the meaning of the words "offered for sale" in the ordinance.

The appeal before me is by way of rehearing and the principle to be applied has been said many times before that the appellate court will only interfere if the decision of the lower court can be said to be tainted with an error of law or such decision is against the weight of the evidence.

After hearing the defence this was how the learned magistrate treated the defence story:

"The line of defence given by the 1st accused, Mr. Alan Webb (DW. 1), was that his company wished to share the benefit of the alleged favourable exchange rates.....

This I find hard to discern and I would be more inclined to agree with the prosecution that all these were made more as a gimmick to attract customers to part with their money particularly during a festive time. Furthermore, there is evidence of DW. 1 that all these models of ovens were never offered at the cancelled higher prices prior to July 24, 1981, for a continuous period of 28 days in the six months proceding the said date."

The offence that is alleged against the two appellants is under section 14(1) of the Trade Descriptions Act (Act 87). Section 14(1) reads:

"14(1) If any person offering to supply goods of any description gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than –

(a) .....

(b) the price at which the goods or goods of the same description were previously offered by him he shall be guilty of an offence."

Then section 14(3) provides :

"14(3). For the purposes of this section –

(a) an indication that the goods were previously offered at a higher price or at a particular price –

(i) .....

(ii) shall be treated, unless the contrary is expressed, as an indication that they were so offered within the preceding six months for a continuous period of not less than twenty-eight days and in the ordinary course of business."

It was by reason of this section 14(3) presumption that the learned magistrate was directed to call for the appellants' defence by the learned judge on appeal.

In explanation of the operation of the above section 14(3)(ii), Cook J. in *House of Holland Ltd.* v. *London Borough of Brent*[3] at p. 298 said:

"The method which Parliament has chosen to get over this difficulty is to invest the indication with a statutory meaning. It is sufficient, in order to show the falsity of the indication, to prove that in its statutory meaning it is untrue. But it seems to us that this also involves the converse proposition, namely, that the indication is not shown to be false unless it is shown to be untrue when bearing its statutory meaning. *It is the statutory meaning which has to be shown to be untrue in order to establish falsity for the purposes of section 11(1).*"

Section 11(1) is the same as our section 14(1).

In the course of counsel's argument, as already stated, it was even suggested that the learned judge had erred in directing the learned magistrate to call for the defence when there was absence of proof of any fact the existence of which is a condition for the presumption to arise. Learned counsel cited *Ng Kim Huat* v. *Public Prosecutor*[4] where Thomson C.J. said:

"It is surely elementary to observe that while a statutory presumption when it arises may operate in place of evidence and so reverse the onus of proof on any point the bare potential existence of such a presumption cannot of itself dispense with proof of any fact the existence of which is a condition precedent of the presumption arising. To say otherwise is to fly in the face of logic."

Still on the question of presumption, Cooke J. in *House of Holland Ltd.* v. *London Borough of Brent*[3] said:

"We are conscious of the fact that, on the construction which we have felt compelled to place on the section, the prosecution will in many cases have to discharge a fairly heavy burden in order to establish that an offence had been committed. It will be necessary for them to deal

with the whole six months' period and to adduce evidence to show that during that period there was no offer at a higher price which continued for a period of 28 days."

Still on the burden placed on the prosecution it is interesting to see what is said in the *Trade Descriptions* by O'Keefe when discussing the *House of Holland Ltd.* v. *London Borough of Brent*[3] and I quote:

"134.1

Where a price at which goods were previously offered is quoted it is to be deemed that they were so offered for a continuous period of 28 days within the preceding 6 months (sub-section 3(a)(ii)). For offences of this nature, it has been established that it is for the prosecution to prove that the goods were not so offered, rather than the defence to show that they were. Thus it was held in *House of Holland Ltd.* v. *Brent London Borough Council* [1971] 2 Q.B. 304; [1971] 2 All E.R. 296, that the natural and ordinary meaning of this sub-paragraph was that it applied whenever there was an indication that goods were previously offered at a higher price, that indication was to be taken to mean that they were offered at a higher price continuously for a period of at least twenty-eight days during the six months' period preceding the indication. It was the necessary burden upon the prosecution to deal with the whole six months' period and adduce evidence to show that during the period there was no offer at a higher price which continued for a period of twenty-eight days. The burden upon the prosecution for an offence under subsection (1)(b), accordingly, is to deal with the whole six months period and to adduce evidence to show that during that period there was no offer at a higher price which continued for a period of twenty-eight days."

It is clear therefore on the basis of the above authority in England that before the presumption under section 14(3) can be invoked the prosecution must satisfy the court by evidence that the goods were not in fact offered. Upon this fact being established, it has been held many times, then will it be incumbent on the court to invoke the presumption. Nothing short of this matter is sufficient.

Now what has transpired in the present case, I think it is clear that before defence is called there was no such evidence led by the prosecution witness. At p. 8 of the appeal record compiled on August 1, 1985 this is clear from defence counsel's submission which states:

"The defence is called not based on the evidence of the prosecution witness. The grounds which they made on appeal were all dismissed. The (lower) court's decision was upheld. But defence is called on an entirely different matter and that is on the presumption under section 14(4)."

The prosecution does not appear to have denied the fact and it says at p. 9 of the appeal record as follows:

"The fact that the High Court had ordered that both accused do enter upon their defence is sufficient to say that a *prima facie* case has been made out."

As I have said earlier the defence seems to suggest now that the defence should not have been ordered to be called in the circumstances that there was absence of evidence by the prosecution that no offer was made at a higher price. It would have been the correct thing for the defence to have taken this matter further if they had disagreed with the decision of the learned judge but they let things be.

Perhaps we should examine whether it is correct that the learned judge had acted in error when he ordered the learned magistrate to call the appellants to their defence. I am of the view, with respect, the learned judge acted correctly and I agree that the appellants should be called to make their defence by virtue of the presumption. The reason is quite plain and obvious. On comparing section 14 of the Trade Descriptions Act (Act 87) with the English Trade Descriptions Act 1968 from which it was lifted, it became clear the presumption in section 14(4) of the Malaysia Act is conspicuously absent in the English Act of 1968. Section 14(4) of the Malaysia Act 1972 provides:

"(4). Where any person is charged with an offence under this section the onus of proving the existence and terms of any recommended price reached upon or that the requirements of subsection (3) above have been compiled with shall be upon the person charged."

It is clear therefore that while in *House of Holland Ltd.* v. *London Borough of Brent*[3] it is for the prosecution to prove falsity of any advertisement having regard to its statutory meaning given under our Malaysian law by virtue of subsection (4) of section 14 it is for the defence to prove that they had so advertised at a higher price for the whole of the relevant period in section 14. If the defence had not done so, then it is false.

On the admission of the appellants itself in this record of appeal it is clear that they, appellants, did not advertise at any time the recommended higher price. The "falsity" meaning to be given is the statutory meaning. I therefore agree with the learned magistrate for reasons given that there was falsity. I therefore confirm her conviction and sentence and I accordingly dismiss the first appellant's appeal. As for the second appellant, Christopher Webb, I duly apply my order dismissing the appeal against conviction and sentence as clearly he was a partner and a party to the carrying on of the busi-

ness with the first appellant though the appellant was managing the business for him. Accordingly, I dismiss the appeal of both appellants.

Appeal dismissed.

Solicitors: *Reddy & Co.*

JAFRI AMIN & ORS. v. PERSATUAN AUTOMOBIL MALAYSIA

[O.C.J. (Ajaib Singh J.) June 9, 1987]

[Kuala Lumpur – Originating Summons P 31-16-86]

Unincorporated Associations – Race Officials Club – Officials at motor race meetings – Application to be officials – Approval not given by Persatuan Automobil Malaysia (Automobile Association of Malaysia) – Whether Automobile Association of Malaysia exercises judicial or quasi-judicial function – Whether discretion properly exercised – Whether there is malice, bias, etc.

Civil Procedure – Specific Relief Act 1950, s. 41 – Application under.

Administrative Law – Whether National Competition Rules imply duty on Automobile Association of Malaysia to observe natural justice.

The respondent, Persatuan Automobil Malaysia, is the Automobile Association of Malaysia (AAM). The AAM has the sole right to control automobile competitions throughout the country and is recognised internationally. The AAM has also drawn up the National Competition Rules (the Rules) to govern all motor sport competitions organised in Malaysia.

The four applicants were members of the Race Officials Club (ROC) of Selangor and the Federal Territory. ROC is recognized by AAM as a club under the Rules. The four applicants applied to be officials at certain motor race meetings. The AAM, for certain reasons, refused to give its approval as required under the Rules. In the present suit, the four applicants sought damages from AAM and certain declarations. They contended that AAM acted *mala fides*, with malice and had failed to exercise its discretion judicially. It was also contended that AAM was biased, prejudiced, vindictive, had acted *ultra vires* the Rules and in making its decisions had failed to observe the principles of natural justice. The application was made under section 41 of the Specific Relief Act 1950.

Held, dismissing the application: (1) the present application cannot be founded under section 41 of the Specific Relief Act. It was wholly misconceived. The ROC and the applicants were in no way entitled to any legal character or to any right as to any property as envisaged in section 41;

(2) the AAM does not exercise a judicial or quasi-judicial function under the Rules. The function of the AAM was purely administrative;

(3) there is nothing in the wording of the Rules by which the court can imply a duty on the part of the AAM to observe the principles of natural justice when the AAM made its decisions under the Rules. The AAM has absolute and unfettered powers under the respective Rules to decide on applications by promoters to hold motor race meetings and to decide whether or not to approve the nominations of officials at race meetings. There is also no place for the application of the principles of natural justice and the AAM is also not obliged to give any reason for its decisions which it may make under the Rules. The AAM was perfectly entitled to withhold its approval under the Rules for any reason whatsoever, not least of which may well be that some particular promoter or official was no longer in the good books of the AAM;

(4) there was insufficient evidence to find that the AAM was biased, prejudiced or had acted *mala fides* against the applicants;

(5) the decisions which the AAM made in this case were within the scope of the Rules and they cannot be challenged in a court of law.

[*Editorial Note:* The appeal to the Supreme Court in this case (Supreme Court Civil Appeal No. 359 of 1986) was withdrawn on January 4, 1988.]

Case referred to:

(1) *Ridge* v. *Baldwin* [1964] A.C. 40 at 85.

CIVIL SUIT.

R. K. Nathan for the applicants.
S. S. Muker for the respondents.

Cur. Adv. Vult.

Ajaib Singh J.: The four applicants in this case are members of the Race Officials Club (ROC) of Selangor and the Federal Territory and at the time of making this application they held office in the ROC as secretary, president, vice-president and treasurer respectively.

The respondent – the Automobile Association of Malaysia (AAM) – has the sole right to control automobile competitions throughout the country and it is recognised by the Federation Internationale de L'Automobile (FIA) which is the sole international authority to make and enforce rules and regulations for the encouragement and control of automobile competitions. As provided for by the International Sporting Code of the FIA, the AAM has drawn up the National Competition Rules to govern all motor sport competitions organised in Malaysia.

Under rule 54 of the National Competition Rules, automobile competitions may be organised in Malaysia only by the AAM and clubs or other promoters approved by the AAM. It is further provided in rule 63 that: